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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

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| |) | |
| |) | |
| EDWIN KING, |) | |
| |) | |
| Petitioner/Appellant, |) | |
| |) | IPC NO. 98-22 |
| |) | |
| vs. |) | DECISION AND ORDER |
| |) | ON PETITION FOR |
| |) | REVIEW |
| DEPARTMENT OF CORRECTION, |) | |
| |) | |
| Respondent. |) | |
| _____ |) | |

THIS MATTER CAME ON FOR HEARING ON THE PETITION FOR REVIEW on May 14, 1999. Petitioner Edwin King (Petitioner or King) was represented by Jim Jones, Esq.; Respondent Department of Correction (DOC or Department) was represented by Timothy R. McNeese, Deputy Attorney General. The petition for review involves the hearing officer's decision dated December 31, 1998. We AFFIRM.

I.

BACKGROUND AND PRIOR PROCEEDINGS

A. Facts.

This is a case about whether the Idaho Personnel Commission has jurisdiction to hear an appeal from a former employee who alleges constructive discharge. Petitioner

Edwin King was employed by the DOC as a building operations manager. He had received “meets expectations” performance evaluations from 1995 through 1997.

In April 1998 King and his supervisor, Don Drum, began an exchange of e-mails and memos concerning King’s behavior and performance. Included among the correspondence was an e-mail from King indicating that he was seeking other employment and would be resigning when he found another position. On April 29, 1998, King received a written letter of reprimand which addressed a number of performance issues.

By letter dated July 3, 1998, King resigned, advising DOC:

I do consider myself to have been constructively terminated and, therefore, I hereby tender my resignation, effective immediately. This is not a voluntary act but brought about by the continual pressure, harassment and unfair treatment I have received in recent months.

This letter of resignation was apparently prompted by an unsigned, undated special evaluation of King covering the period of September 1997 through June 1998. The evaluation addressed King’s performance deficiencies, and required regular meetings between King and Drum to ensure King’s compliance. The evaluation contained a “does not meet performance expectations” rating.

B. Appeal to Personnel Commission.

On July 22, 1998, King filed a notice with the Idaho Personnel Commission, appealing “the action of Respondent, Idaho Department of Correction, in constructively terminating Appellant’s employment on July 3, 1998.” The matter was assigned to hearing officer Jean R. Uranga.

DOC filed a motion to dismiss on October 16, 1998, citing a lack of jurisdiction. The motion was briefed by both parties. On November 22, King submitted an affidavit and exhibits to the hearing officer. The matter was argued by telephone on November 25, 1998.

The hearing officer issued her order granting DOC's motion to dismiss on December 31, 1998.

The hearing officer concluded that King had no right of appeal to the Idaho Personnel Commission pursuant to Idaho Code § 67-5316(1)(a) because: 1) by tendering his resignation, King lost his status as a classified employee of the state, and the Commission's jurisdiction does not extend to former employees; 2) King failed to pursue administrative remedies available to him (the problem solving process); 3) DOC took no action toward King which would lead a prudent person to believe his employment had been terminated; and 4) Don Drum was not an appointing authority who had the power to terminate King. The hearing officer also concluded that King had no right of appeal to the Commission pursuant to Idaho Code § 67-5316(1)(b).

King filed a timely petition for review on January 14, 1999. In his petition for review, King cited three areas in which he believed the hearing officer erred: 1) by determining, as a matter of law, that the Idaho Personnel Commission has no jurisdiction to entertain an appeal relating to constructive discharge; 2) by determining, as a matter of law, what constitutes a constructive discharge; and 3) by dismissing the appeal without a hearing to determine whether a constructive discharge occurred.

II.

ISSUES

A. Did the hearing officer err in determining, as a matter of law, that the Idaho Personnel Commission has no jurisdiction to entertain an appeal relating to constructive discharge?

B. Did the hearing officer err in determining, as a matter of law, what constitutes a constructive discharge?

C. Did the hearing officer err in dismissing the appeal without a hearing to determine whether a constructive discharge had occurred?

III.

STANDARD AND SCOPE OF REVIEW

The standard and scope of review on non-disciplinary appeals to the Idaho Personnel Commission is as follows:

When a matter is appealed to the Idaho Personnel Commission it is initially assigned to a Hearing Officer. I.C. § 67-5316(3). The Hearing Officer conducts a full evidentiary hearing and may allow motion and discovery practice before entering a decision containing findings of fact and conclusions of law.

* * *

On a petition for review to the Idaho Personnel Commission, the Commission reviews the record, transcript, and briefs submitted by the parties. Findings of fact must be supported by substantial, competent evidence. *Hansen v. Idaho Dep't of Correction*, IPC No. 94-42 (December 15, 1995). We exercise free review over issues of law. The Commission may affirm, reverse or modify the decision of the Hearing Officer, may remand the matter, or may dismiss it for lack of jurisdiction. I.C. § 67-5317(1).

Soong v. Idaho Dep't of Health and Welfare, IPC No. 94-03 (February 21, 1996), *aff'd*, 132 Idaho 166, 968 P.2d 261 (Ct. App. 1998)(footnote omitted).

IV.

ANALYSIS

This appeal involves only questions of law. No facts are in dispute. The Commission exercises free review over questions of law.

A. Procedural Issue

In his petition for review King argues that the hearing officer treated DOC's motion to dismiss as a motion for summary judgment. Petitioner bases this argument on the hearing officer's discussion of an affidavit and exhibits submitted by Petitioner, together with her

analysis that the facts alleged by Petitioner did not rise to the level of a constructive discharge.

DOC's motion, which was denominated as a "Motion to Dismiss," was accompanied by a "Memorandum in Support of Motion to Dismiss." Both the motion and the memorandum in support cited the IDAPA rule governing motion practice, together with Idaho Rules of Civil Procedure 12(b)(1) (motion to dismiss for lack of jurisdiction) and 12(b)(6) (motion to dismiss for failure to state a claim). King's memorandum opposing the motion to dismiss raised no procedural issues. Prior to the oral argument on the motion, King submitted an affidavit and exhibits to the hearing officer. At the motion hearing, the parties engaged in a colloquy with the hearing officer about whether Petitioner could submit additional documents. Counsel for DOC objected to the submission of additional documents by Petitioner, suggesting that by submitting the affidavit and exhibits, Petitioner was attempting to change the motion to dismiss into a motion for summary judgment. In response, counsel for Petitioner argued that the consideration of documents outside the record did not convert a motion to dismiss for lack of jurisdiction into a motion for summary judgment.

The hearing officer issued her order on December 31, 1998. The order was denominated as a "Preliminary Order on Motion to Dismiss."¹ In her Order, the hearing officer noted that the Idaho Rules of Civil Procedure (IRCP 12(b)(1) and 12(b)(6)) were not applicable to administrative proceedings before the Idaho Personnel Commission, but that IRAP 52, which was applicable, allowed for motion practice. The hearing officer discussed the factual underpinnings of the matter as presented in Petitioner's affidavit and exhibits, as

¹ The Order was denominated as a "Preliminary Order," because all hearing officer orders are "preliminary." IPC Rule 201.09.

well as the constructive discharge case law presented by both parties. Nowhere in the preliminary order did the hearing officer suggest that she was treating the motion to dismiss as a motion for summary judgment.

The hearing officer may have delved deeper into the facts of the case at bar than she needed in order to reach her jurisdictional decision. However, there is no indication that the hearing officer handled the motion to dismiss as a motion for summary judgment. She clearly noted that the Rules of Civil Procedure were inapplicable to the Commission proceeding, and to the extent that she did explore the facts, she did so based on documents submitted by Petitioner, not DOC.

B. Jurisdiction

The hearing officer determined as a matter of law that this Commission lacked jurisdiction to hear King's appeal because he did not come within the provisions of Idaho Code § 67-5316(1)(a) or (b). King argues only that the hearing officer erred in her conclusion that a constructive discharge is not within the purview of Idaho Code § 67-5316(1)(a).

The hearing officer enumerated four reasons why King's appeal did not come within the ambit of Idaho Code § 67-5316(1)(a). We believe that the first reason is dispositive. The hearing officer determined that this Commission lacked jurisdiction to hear King's appeal because King had resigned on July 3, 1998 and was no longer a "classified employee," and because he suffered no "disciplinary dismissal, demotion or suspension."

The Idaho Personnel Commission is a tribunal of limited jurisdiction whose jurisdiction depends entirely upon the statutes which grant its powers. *Washington Water Power Company v. Kootenai Environmental Alliance*, 99 Idaho 875, 591 P.2d 122 (1979). Idaho Code § 67-5316(1)(a) specifically limits appeals to the Idaho Personnel Commission to

classified employees who have received a disciplinary dismissal, demotion or suspension, and have completed the departmental due process procedure.

This statute defines and strictly limits the IPC's jurisdiction. *Sheets v. Idaho Dep't of Health and Welfare*, 114 Idaho 111, 753 P.2d 1257 (1988); *Stroud v. Department of Labor and Ind'l Serv.*, 112 Idaho 891, 893, 736 P.2d 1345, 1347 (Ct. App. 1987); *Fry v. Idaho Dep't of Correction*, IPC No. 94-38, p. 5 (May 13, 1996), *aff'd* Case No. CV-OC-96-02864*D (Dist. Ct. 4th Dist., Jan. 23, 1997)[*aff'd* 131 Idaho 169, 953 P.2d 609 (1998)]; *Campbell v. Idaho Dep't of Admin.*, IPC No. 94-41, p. 9 (April 12, 1996); *Allen v. Idaho Dep't of Ins.*, IPC No. 94-27, p. 6 (May 12, 1995). The statute clearly limits the IPC's power to hear appeals from *classified employees*. I.C. § 67-5316(a), (b). The IPC has no power to hear an appeal from an ex-employee. *Campbell, supra*. Regardless of whether jurisdiction exists, it is clear that the IPC has the power to determine whether it has jurisdiction over an appeal. *Id.*; *Fry, supra*.

Coler v. Idaho Department of Correction, IPC No. 95-16 (April 18, 1997), 1997 IPC Reporter at 53. (Footnote omitted).

The record reflects that prior to his resignation, Mr. King received a letter of reprimand and was placed on a special evaluation period. He then received a rating of "does not meet performance expectations." None of these actions rise to the level of discipline which requires that the employee receive due process or confers a right of appeal. Mr. King could have availed himself of the departmental problem solving procedure regarding the reprimand, the special evaluation period, and the rating, but did not do so. Instead, on July 3, he tendered his resignation, effectively immediately. Once King's resignation became effective, he lost his standing to utilize the appeal process.

Petitioner's argument would allow every unhappy employee to resign, allege constructive discharge, and have their case heard by this Commission. Idaho Code § 67-5316(1) does not vest this Commission with jurisdiction to hear appeals on every action taken by an agency against an employee, even when the agency may have acted wrongfully or

illegally. The remedy for non-disciplinary claims of discrimination, retaliation by agencies against employees, or constructive discharge remains, as it always has, with the courts.

Petitioner astutely notes that if the Commission accepts the hearing officer's conclusion that ex-employees cannot appeal to the Commission, then the Commission could never hear cases of constructive discharge. This is precisely DOC's position, and the one we adopt today.

The Idaho appeals court defined "constructive discharge" in *Knee v. School District No. 139, In Canyon County*, 106 Idaho 152, 154, 676 P.2d 727, 729 (Ct. App. 1984), wherein it stated: "A constructive discharge is, by definition, an involuntary resignation." Petitioner correctly notes that in order to determine whether there has been a constructive discharge, one must look at the surrounding facts to determine whether the resignation was voluntary or involuntary. We agree with DOC's position is that there is no need to make the determination whether the resignation was voluntary or involuntary because in neither event does this Commission have jurisdiction. A resignation, whether voluntary or involuntary, is not a disciplinary dismissal. The statute expressly permits the appeal of disciplinary dismissals, even though at the time of appeal, the appellant is technically a former employee.

This Commission reached a similar conclusion in *Coler*. Coler walked off her job as a correctional officer at the North Idaho Correctional Institution in Orofino. She filed a grievance over what she described as her "termination." The Department declined to accept her grievance because she was no longer an employee of the Department. She appealed the Department's decision to this Commission. The issue of jurisdiction was not raised prior to the hearing by a motion to dismiss. A hearing was held and the hearing officer dismissed Coler's appeal for lack of jurisdiction, *because the employee resigned*. This Commission affirmed. The case at bar is virtually identical except for the procedural posture. The hearing officer

determined that King resigned. The hearing officer recognized that a resignation was not a disciplinary discharge or dismissal. The hearing officer dismissed for lack of jurisdiction.

Because we believe that the hearing officer correctly determined that this Commission lacks jurisdiction to hear claims of constructive discharge, we need not reach the remaining issues raised by Petitioner.

V.

CONCLUSION

For the reasons stated above, we AFFIRM the decision of the hearing officer dismissing the appeal on jurisdictional grounds.

VI.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;
- (2) That the commission has acted without jurisdiction or in excess of its powers;
- (3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this 17th day of June, 1999.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/
Sherry Dyer, Chair

/s/
Peter Boyd

/s/
Ken Wieneke

Don Miller²

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Decision and Order on Petition for Review in *King v. Department of Correction*, IPC No. 98-22, was delivered to the following parties by the method stated below on the 17th day of June, 1999.

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² Commissioner Miller did not participate in this decision.